

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
UNITED STATES OF AMERICA,	:	
Plaintiff,	:	18 Crim. 340 (LGS)
	:	
-against-	:	<u>ORDER</u>
	:	
SOHRAB SHARMA et al.,	:	
Defendants.	:	
-----X	:	

LORNA G. SCHOFIELD, District Judge:

WHEREAS, the Opinion and Order, dated March 8, 2021, denied the Ancillary Petition for Hearing to Adjudicate Validity of Legal Interest and Right to Forfeited Property Under 21 U.S.C. § 853(n)(1) (“Petition”) filed by Jacob Zowie, Thomas Rensel, Wang Yun He, Chi Hao Poon, King Fung Poon, Jae J. Lee, Mateusz Ganczarek and Rodney Warren (collectively, “Claimants”). The Petition challenged the forfeiture of units of the Ether cryptocurrency seized by the Government and was denied because Claimants did not meet their burden to show standing for purposes of the forfeiture statute, 21 U.S.C. § 853(n): a plausible interest in or judgment and/or lien against specifically-identified property. *See United States v. Watts*, 786 F.3d 152, 160 (2d Cir. 2015); *United States v. Madoff*, No. 09 Crim. 213, 2012 WL 1142292, at *4 (S.D.N.Y. Apr. 3, 2012) (collecting cases).

WHEREAS, Claimants have filed a letter motion seeking leave to file an amended Petition (Dkt. Nos. 471, 478). The Government opposes (Dkt. No. 477). Claimants’ proposed amended Petition contains lengthy factual allegations tracing the transfer of cryptocurrency from digital wallets belonging to Claimants to the digital wallet seized by the Government. Mindful that the standing inquiry under 21 U.S.C. § 853(n) is subject to the same plausibility standard as a motion to dismiss a civil pleading, *see Pacheco v. Serendensky*, 393 F.3d 348, 352 (2d Cir.

2004); *accord United States v. Tucker*, No. 16 Crim. 91, 2020 WL 6891517, at *3 (S.D.N.Y. Nov. 24, 2020), and accepting the factual allegations in the proposed amended Petition as true, Claimants plausibly assert legal interests in portions of the Ether seized by the Government.

WHEREAS, the Government characterizes the seized Ether as proceeds of Defendants' fraud, rather than property used to facilitate a fraud. This argument is unpersuasive because the proposed amended Petition, by virtue of its traceability analysis, plausibly alleges that the cryptocurrency transferred from Claimants was the same as that seized by the Government.

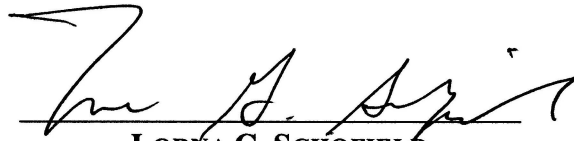
WHEREAS, the Government argues that the proposed amended Petition's traceability analysis is flawed and omits key details. This argument is unpersuasive because, taking the amended Petition's allegations as true, as required by the applicable standard, it is plausible that some portion of the Ether in the seized wallet was that transferred by Claimants.

WHEREAS, the parties dispute whether (1) the Court should impose a constructive trust in the event it ultimately finds Claimants have met their burden of showing a greater right to the seized Ether and (2) the extent to which judgment liens obtained by Claimants in a parallel civil proceeding constitute permissible evidence of Claimants' interest in the Ether. At this stage of the ancillary forfeiture proceeding, the relevant inquiry is whether the proposed amended Petition plausibly alleges that Claimants have a greater interest in the forfeited property. The Petition does so for the reasons set forth above. Accordingly, it is hereby

ORDERED that Claimants' letter motion to submit an amended Petition is **granted**. By **March 30, 2021**, Claimants shall file the proposed revised Petition at Dkt. No. 471-1. It is further

ORDERED that by **April 6, 2021**, the parties shall meet and confer and file a joint letter proposing next steps.

Dated: March 29, 2021
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE